

APPEAL NO. 040771
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB.CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 18, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 12th and 13th quarters.

The claimant appeals, principally on a sufficiency of the evidence basis, asking that we reweigh the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant satisfied the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contends that she has met this requirement through documented job searches during the 12th and 13th quarter qualifying periods.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. The claimant provided testimony and documentation of 13 job contacts during the 12th quarter qualifying period and 15 job contacts during the 13th quarter qualifying period with at least one every week of the respective qualifying periods. Nonetheless, the hearing officer noted that the claimant had made the minimum job contacts with many employers that were not hiring and commented that the claimant, a registered nurse, was (in the hearing officer's opinion) only going through the motions to qualify for SIBs. The carrier also points out that there was conflicting testimony that the claimant was taking care of her 76 year old mother which constitutes a full-time job.

In any event, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established and we decline to attempt to substitute our own judgment for that of the trier of fact, even if the evidence might support a different result. National Union Fire Insurance Company of

Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge